IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.7 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
SHAKTI KHANDSARI UDYOG - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/11/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following questions

under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:-

1. Whether, the appellate tribunal is right in law and on facts in directing the assessing officer not to deduct the subsidy received by the assesee company from the cost of the assets for the purpose of calculating depreciation and investment allowance ?

2. Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to initial depreciation under section 32(1)(iv) of the Act on the cost of labour quarters which according to the Assessing Officer were completed in the earlier year of which depreciation was granted ?

2. The Assessment Year is 1984-85 and the relevant accounting period is Samvant Year 2039.

3. Heard Mr.T.U.Bhatt, learned Standing Counsel on behalf of the applicant-revenue. Though served, there is no appearance on behalf of the respondent-assessee.

4. In so far as question No.1 is concerned, it is an accepted position that the controversy in issue stands concluded by the decision of this Court in the case of Commissioner of Income-tax Vs. Grace Paper Industries Pvt. Ltd., [1990] 183 ITR 591 (Guj.) upon which reliance had been placed by the Tribunal. In the circumstances, it is not necessary to set out the facts and contentions in detail. Mr.Bhatt has very fairly pointed out that the aforesaid decision of this Court has been approved by the Apex Court in the case of Commissioner of Income-tax Vs. P.J. Chemicals Ltd., 1994 [210] ITR 830. Under these circumstances, the question No.1 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. In so far as question No.2 is concerned, the Tribunal has recorded as a matter of fact that the Assessing Officer has not considered the letter dated 17th March, 1987 addressed by the assessee to the Assessing Officer, in which it

had been specifically mentioned that though most of the constructions were completed in the last year, the final expenses of Rs.39,559/- had been incurred in Samvant Year 2039. In view of the findings of fact arrived at after appreciating the evidence on record, the Tribunal had held that the assessee was entitled to initial depreciation under Section 32(1)(iv) of the Act on the cost of labour quarters in the year under consideration. In the circumstances, it cannot be said that there is any infirmity in the order of the Tribunal so as to warrant any interference at the hands of this Court. Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

6. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**